

A
LETTER
 FROM A
LAWYER in the **COUNTREY**
 TO A

Member of Parliament :

O R,
INDEMNITY the Effect of **VACANCY**.

S I R,

I Remember in one of your former Letters you were pleased to desire me to send you the general Opinion of the Countrey concerning the Vacancy of the Throne, and how they seem'd to stand affected upon it : And I then return'd you in Answer, That your Proceedings therein were very well approved of; for it could not be imagined that so many of the Nobility and Gentry would have been so ready to have hazarded their Lives and Fortunes as they did, without a just and reasonable Cause ; nor that so many Gentlemen of Estate and Quality would have appeared in this Parliament, if they had not been entirely convinced of the safety and innocency of their appearance ; neither the People of *England* who chose them, nor the Persons elected, could be imagined to admit themselves guilty of High-Treason, the greatest Crime of the Law : and if there had not been a Vacancy of the Throne, by the late King's Abdication of the Government, no less a Crime than High-Treason could have been imputed to them. But since that Point hath been so solemnly determined, the Nation is entirely satisfied, that the Parliament have thereby set forth a Declaration of Indemnity to Themselves and all Others ; and therefore it was that by the universal Consent of all People, Their Majesties King *WILLIAM* and Queen *MARY* were proclaimed in all places with so much joy and satisfaction : There was something in that Vote, that pleased all manner of persons, as soon as they had a right Notion of it ; they lookt upon the Nation as newly Baptized from all its Sins and Corruptions, and that every Man was to begin the course of his Life upon a new Basis and Foundation ; when they saw no publick accusation was like to happen, every Man began to condemn himself ; some their Ambition, Vanity and Pride that cast a Mist before their Eyes ; others their mistaken interest and fears ; some began to review the Principles of Loyalty and Government which they had imbibed from their Infancy, under the Doctrine of Passive-

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Obedience ; others condemned their unfortunate compliance of *doing evil, that good might come of it* : but all looked back with Safety, as well as resolution of Amendment, upon their past Errors. Those who never saw any Changes of Government, and had little experience in such Affairs, thought themselves sufficiently provided with a Stock of bought Wit, to make them good Subjects for the Publick, as well as cautious and prudent as to themselves. Thus whilst every Body reflected upon their own Miscarriages, they could not but see that a few Evil Ministers at Helm had been the cause of all this Misery, both to *Themselves* in particular, as well as the Nation in general ; and therefore some extraordinary Act of Attainder against those Evil Councillors, was all that was expected, or can be approved of by the generality of the People of *England* : And the rather, because it is so publicly known with what Zeal His Majesty hath recommended a most General and Express *Act of Oblivion* for all his Subjects, with Exceptions only of such Evil Councillors as you in your great Prudence and Mercy should think fit. Matters being in this posture with us in the Countrey, and such being the common expectations of all Men, I must confess I found that general Vote against those that omitted to take the Oaths, did not only affect the Persons concerned, who, I'll assure you, are very numerous, and have many Friends and Relations that pity their Case : but I perceived all sorts of People concerned at it ; for they looked upon it as a leading Card to their own Miscarriages, tho of another nature : All those that were concerned so much as in *Addresses* and *Abhorrences* in the Reign of King *Charles* the Second, who are a great part of the Church of *England* ; and all those that signed *Addresses*, or other Papers for taking away the *Test* and *Penal Laws*, who are a great part of the *Dissenters*, (not to mention a multitude of greater Offenders, who cannot expect to fare better) are terribly afraid of these Proceedings ; and where there is *Fear*, there you will always find *Hatred* and *Aversion*. So that I may safely say, That the Consequences of these things are dangerous at such a critical juncture of time ; and tho the evil effects thereof may not be so visible to the World, yet I fear this Nation may too soon be sensible of them. Therefore it is that I have thought fit to put you in mind of that Abdication and Vacancy, which being voted by you as a matter necessary both for your own particular Indemnity, as well as the general Interest of the Nation, the Benefit thereof cannot without some Inequality (not to say more) be denied to the more general Miscarriages and Offences of the Nation. But there are some zealous Men in the World, who being lately freed from severe Usage themselves, are not contented with Revenge against their particular Adversaries, unless they can involve all Mankind (Friends as well as Foes) in Troubles and Afflictions. And from such Men as these, who are neither willing to admit of this, nor any other Act of Indemnity, I meet with several Objections, which I thought fit to give a sudden Answer to, for your private satisfaction ; and that with all the submission and deference imaginable to the Wisdom of our Superiours at this time assembled in Parliament.

Object. I. *That nothing is more common in our Law books, than to find Offences committed in one King's Reign, to be called in question and punished in the Reign of his Successors ; and that Their present Majesties (whom God long preserve) being Crowned King and Queen of England, &c. there is the same reason in this, as in all other Cases.*

Resp. There are indeed many Cases and Instances of that kind ; but the reason why there may be a Retrospect in such Cases, is a clear Illustration why there may not be in this. There is as much difference between the two Cases, as there is between a Descent, and Purchase at Common-Law : The Heir by Descent may distrain upon the Tenant for Rent, partly incurred in the Life of the Ancestor ; but a person that comes in by Purchase, cannot. The Law casts a Freehold upon the Heir by Descent, before entry ; upon a Purchaser it doth not. But in the Case of the Crown, there seems a much greater difference ; for in the

the Case of a Descent to the Crown, the same Politick Capacity remains *in esse*, tho in another person; and therefore it is said in such a Case, *That the King never dies*, but he is said only *dimittere Coronam* upon the next Heir; for in such a Case the Law allows of no Interval, or *Inter-Regnum*, but the Regal Power is immediately devolved upon the next Heir by construction of Law. And since the Politick Capacity remains without interruption, and the Execution (or punishing Power) of the Law is lodged in the King, by reason of the Politick Capacity; and since all Offences are committed *contra Coronam & Dignitatem suam*, against the King by reason of his Politick Capacity, and not by reason of his Natural; that is, against him *quatenus Rex*, and not *quatenus Homo*: where the Regal Power continues without interruption, and therein the Executive Power of the Law; there Offences against that Power do continue also, and may be punished.

But in this present Case, where there is a total Vacancy of the Throne by the late King's Abdication of the Government, both the Natural and Politick Capacity, and therein the entire Subject of the executive (or punishing) Power of the Law, is in Judgment and Construction of Law totally merged and extinct by lesser and Devolution of the Government upon the People; and where there is a total failure both of the Politick Capacity, and of the Executive (or punishing) Power, there must, by consequence, be an Indemnity to all Offenders.

Where there is a total Vacancy of the Throne, or Regal Power, there must be a Vacancy of Offences against that Power.

And the late King *James* could not Abdicate the Government, but he must also Abdicate that which was inseparably annexed to it, *viz.* the Executive Power of the Law, unless you will suppose as great a Miracle as *Transubstantiation*, by preserving an Accident, or abstracted Power, without its Subject.

Object. II. There are some Offences which are not only against the King, but being against the Fundamental Constitution of the Government, are Offences against the People also; and those Offences may remain, notwithstanding an Abdication of the Regal and Punishing Power.

Resp. What these Offences against the People are, we do not find determined in our Books of the Law; but this I have often read, That the King may pardon all Offences whatsoever: And where the King may Abdicate the Government from his Heirs, tho he could not dispose of it from them, *a fortiori*, he may Abdicate the punishment of all Offences, where he had a right to pardon them.

But *secondly*, Let the Offences be of what nature they will, if they must be punished at this day, the Indictment must run in this manner, for instance, in the Case of Treason.

Quod A. B. nuper de L. gen' ut falsus proditor' contra Illustrissimum & Christianissimum Principem Jacobum secundum nuper Angl' & c. Regem, ad tunc supremum & naturalem Dominum suum, timorem Dei non habens, nec debitam legianciam suam ponderans, sed instigatione Diabolica seductus cordialem dilectionem & veram & debitam obedientiam quam verus & fidelis subditus dicti nuper Regis erga ipsum Regem gereret & de jure gessisse tenebatur, penitus substrahere delere & extinguere intendens (tali die anno & loco) false malitiose & proditorie conspiravit imaginatus fuit circumvixit & compassavit dictum nuper Regem interficere, & ad mortem & finalem destructionem adducere, and so forth. And then concludes, Contra legiantie suae debitum ac contra pacem dicti nuper Regis Coronam & Dignitatem suam.

The like form, *mutatis mutandis*, is to be observed in all lesser Offences. Now, if no such Offence can be punished but by Indictment in this form, for committing such a Fact against the Peace of the late King *James*, his Crown and Dignity, since his Crown and Dignity is totally vacated and extinct, how can any Offences remain?

Object. III.

Object. III. *That by a late Act of Parliament for reviving of Actions and Processes, and for supplying other Defects relating to Proceedings at Law, it's provided, That in Indictments, Informations, or Actions, wherein Conclusions used to be [contra pacem Domini Regis] to conclude [contra pacem Regni,] and the Indictments shall be good, tho the words [Domini Regis Coronam & Dignitatem suas] be omitted.*

Resp. That this Statute extends only to Offences committed between the 11th of December, Anno 1588. and before the 13th day of February following, and not to any Offences committed before the late King's departure, nor after the proclaiming of Their present Majesties: So that this Statute can be no real Objection, but on the contrary may rather seem to enforce the precedent Argument. Nay, here seems an Authority of this present Parliament in this Point; for they agree, and have thereby determined, That after the Abdication of the Government, all Indictments *contra pacem Domini Regis, Coronam & Dignitatem suas*, are void: But at this day no Offences committed before the late King's departure can be punished, but by such an Indictment or Information; therefore they cannot be punished at all.

Object. IV. *That this Opinion is of the first Impression, and only promoted by some Guilty Lawyer, one of the Ringleaders of all our late Miseries; and that it would be inconvenient that those Evil Counsellors, who by their Advice had almost sacrific'd the Nation to Popery and Slavery, should reap the benefit of such an Indemnity.*

Resp. It's not desired that they should; but such as the Parliament in their great Wisdom shall think fit, are by all People freely submitted to a Bill of Attainder. The Representatives of the Nation may, if they please, supply the defect of a Jury; and, after hearing the Parties in their own Defence, inflict what Punishment seems just and equitable in their great Judgments upon particular persons.

This is a Lawyer, you well know, intends nothing but the publick Good, and humbly conceives this Opinion is as ancient as the other upon which it's grounded: but having for some years withdrawn himself from Practice, humbly begs a favourable Construction of such a hasty Letter.

As to all those worthy Members of your acquaintance, that neglect their own Concerns for the publick Service of the Nation, you may assure them, That nothing is so much wanting amongst us in the Countrey, as an expresse Act of Indemnity, which the People do humbly hope that Their Majesties in their great Goodness and Clemency will not permit to be any longer delayed, especially since your own Proceedings give them such a Title to it. When that is past, you will find *England* will be united, the Throne established, and no hopes left for *France*;

Et præstat CAUTELA quam MEDELA.

Licensed and Entred according to Order.

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